

2022 FEB 25 2:28 PM '20

CINDY MURRAY

ORDINANCE NO. 2022-07

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF TIPPECANOE COUNTY,
INDIANA, TO REZONE CERTAIN REAL ESTATE FROM **GB** to **I3**

BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE, INDIANA:

Section I: The Unified Zoning Ordinance of Tippecanoe County, Indiana being a separate ordinance and part of the Municipal Code of Lafayette, Indiana is hereby amended to rezone the following described real estate situated in Fairfield Township, Tippecanoe County, Indiana, to-wit:

See Attachment Exhibit A

Section II: The above-described real estate should be and the same is hereby rezoned
from **GB** to **I3**.

Section III: This Ordinance shall be in full force and effect from and after its adoption.

**PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF LAFAYETTE,
INDIANA, THIS _____ DAY OF FEBRUARY, 2022.**

_____, Presiding Officer
ATTEST:

Cindy Murray, City Clerk

Presented by me to the Mayor of the City of Lafayette, Indiana, on the _____ day
of February, 2022.

Cindy Murray, City Clerk

This Ordinance approved and signed by me on the _____ day of February, 2022.

Tony Roswarski, Mayor

Attest:

Cindy Murray, City Clerk

EXHIBIT A

The East half of a certain piece of land being part of the North half of the East half of the Southwest Quarter of Section Thirty-one (31) in Township Twenty-three (23) North, Range Four (4) West, described as follows, to-wit:

Beginning at the Southwest corner of said North half and running thence North sixty (60) poles; thence East sixty-four and 45/100 (64.45) poles; thence South thirty and 50/100 (30.50) poles; thence South fifty-eight (58) degrees West fifty-two and 57 /100 (52.57) poles to the South line of said North half; thence West nineteen and 52/100 poles to the place of beginning, said East half containing ten (10) acres, more or less.

ALSO, a fractional part of the North half of the East half of the Southwest Quarter of Section Thirty-one (31) in Township Twenty-three (23) North, Range Four (4) West, described as follows, to-wit:

Beginning at a point sixty (60) poles North and sixty-four and 45/100 (64.45) poles East of the Southwest corner of said North half; running thence East three (3) poles; thence South twenty-eight and 36/100 (28.36) poles; thence South fifty-eight (58) degrees West three and 75/100 (3.75) poles; thence North thirty and 50/100 (30.50) poles to the place of beginning, containing fifty-five hundredths (55/100) of an acre, more or less.

EXCEPT A part of the Northeast Quarter of the Southwest Quarter of Section 31, Township 23 North, Range 4 West, in Fairfield Township, Tippecanoe County, Indiana, described as follows, to-wit:

Commencing at a stone at the Northeastern corner of the Southwest Quarter of said Section 31-23-4; thence South 00 degrees 26' 00" West (assumed bearing) along the Eastern line of said Southwest Quarter a distance of 330.00 feet; thence South 89 degrees 55' 00" West a distance of 206.64 feet to an iron pipe and the point of beginning of the herein described tract; thence South 00 degrees 29' 30" West a distance of 453.07 feet to a point on the proposed Northerly right-of-way line of Elston Road; thence South 58 degrees 00' 00" West on and along said Northerly right-of-way line a distance of 263.19 feet; thence North 00 degrees 29' 30" East a distance of 593.70 feet; thence South 89 degrees 42' 00" East a distance of 222.00 feet to the point of beginning, containing 2.667 acres, more or less.



Area Plan Commission of Tippecanoe County, Indiana

February 17, 2022
Ref. No.: 2022-026

Lafayette City Council
20 North 6th Street
Lafayette, Indiana 47901

CERTIFICATION

RE: Z-2845 JETBOY, LLC (GB to I3):

Petitioner is seeking a rezone of 7.883 acres, for an existing limo service and proposed outdoor storage of RV's and boats, located on the north side of Elston Road, specifically, 600 Elston Road, Lafayette, Fairfield 31 (SW) 23-4. With Commitment. CONTINUED FROM THE JANUARY MEETING TO ADD A COMMITMENT AND CORRECT A FILING DEFICIENCY.

Dear Lafayette City Council:

As Secretary to the Area Plan Commission of Tippecanoe County, I do hereby certify that at a public hearing held on February 16, 2022 the Area Plan Commission of Tippecanoe County voted 4 Yes – 8 No, an inconclusive vote for the proposed commitment, and 2 Yes – 10 No on the motion to rezone the subject real estate from GB to I3. Therefore, the Area Plan Commission of Tippecanoe County recommends to the Lafayette City Council that the proposed rezoning ordinance be DENIED for the property described in the attachment.

Public Notice has been given that this petition will be heard before the Lafayette City Council at its March 07, 2022 regular meeting. Petitioner or their representative must appear to present their case.

If City Council approves the rezoning with commitment, APC staff will ensure that the approved commitment is recorded and an original recorded commitment is sent to Lafayette City Council.

Sincerely,

David Hittle
Executive Director

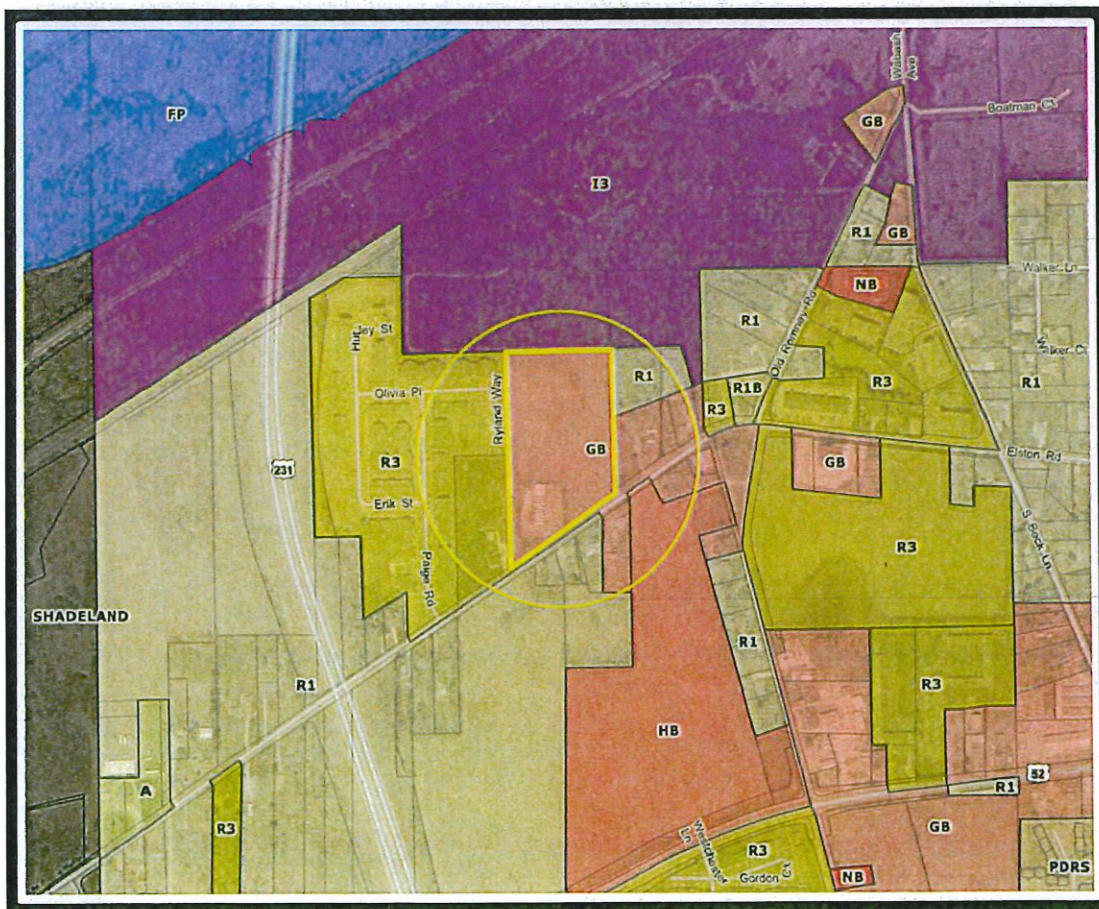
DH/jae

Enclosures: Staff Report & Ordinances

cc: Daniel Gillis, Petitioner
Kevin Riley, Reiling Teder & Schrier, LLC

**Z-2845
JETBOY, LLC
(GB to I3)**

**REVISED STAFF REPORT
February 10, 2022**



**Z-2845
JETBOY, LLC
(GB to I3)
WITH COMMITMENT**

**Revised Staff Report
February 10, 2022**

A commitment was filed on January 31, 2022 after the original filing on December 13, 2021. This staff report was revised per the addition of said commitment. The italicized text indicates staff's revisions.

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner and owner, Jetboy, LLC (represented by Kevin Riley of Reiling, Teder & Schrier, LLC), is requesting the rezoning of a 7.8-acre tract with commitment. The site is located on the north side of Elston Road, between the US 231 bridge and Old Romney Road, specifically, 600 Elston Road, in Lafayette, Fairfield 31 (SW) 23-4.

An airport shuttle service called Express Air Coach, Inc. (EAC) operates and stores its vehicles in the tract's front quarter. The non-binding site plan indicates the proposed use of the remaining area is the outdoor storage of boats and recreational vehicles.

ZONING HISTORY AND AREA ZONING PATTERNS:

The site is zoned GB (General Business), as is a portion of the lot adjoining to the east. The remaining adjoining property to the east is zoned R1. To the west is an R3-zoned area. A large area of R1 exists to the south across Elston Road and a mix of HB, GB, and R3 zones at the intersection of Elston and Old Romney Roads can be found. Adjacent to the north is I3 (Industrial) zoning.

Petitioner attempted to rezone this same property in 2020 (Z-2807 Jetboy, LLC). That I3 rezoning received a recommendation of approval from the APC in November 2020 only after a commitment was filed limiting the future uses on site; however, the request was denied by Lafayette City Council in January 2021. Petitioner has returned with the same request, this time with a less restrictive commitment, close to 14 months later.

AREA LAND USE PATTERNS:

1.5 acres of the 7.8-acre site currently supports Express Air Coach, Inc., whereas the remaining 6.3 acres is undeveloped. To the west are buildings in the Overlook Pointe Apartments subdivision. To the north is the I3-zoned St. Mary's Cemetery and single-family homes exist on both sides of this stretch of Elston Road.

TRAFFIC AND TRANSPORTATION:

The *Thoroughfare Plan* classifies Elston Road as an urban secondary arterial. The existing entrance will remain as-is and continue to service EAC. A second, 30' wide entrance drive is proposed in the non-binding site plan to serve the new outdoor storage area and will need to be reviewed and approved by the City Engineer.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

City sewer and water serve the site. An existing septic field is shown on the site plan that is to be abandoned. If the rezoning request is approved, a 30-foot wide type C bufferyard along the western property line (where it abuts an R3 zone) and a portion of the eastern property line (where it abuts an R1 zone) are required. A 20-foot wide type A bufferyard is needed along the eastern property line where it abuts GB zoning.

STAFF COMMENTS:

This rezone request has been submitted with an intent to house a new business along with the existing use. The current use on 1.5 acres, leased by EAC is classified as local and suburban transit and interurban highway passenger transportation (SIC 41). The remaining area's proposed use is classified as motor freight transportation and warehousing (SIC 42). Both uses are permitted in GB zones only on lots up to 2 acres in area. Because the new use would be on a tract of land larger than 2 acres and have outdoor storage, the rezone to I3 is required.

The UZO and USO require that each principle use building be located on a separate lot requiring a subdivision process. However, the petitioner has confirmed that no additional building is being proposed at the site. No land division would be required if offices for both land uses operate from the existing building.

Petitioner filed the same request previously which was heard at the November 18th, 2020 APC hearing. However, there was previously a commitment filed with the petition that stated "the use of the real estate by petitioner shall be for SIC 41- Local passenger transportation and SIC 42 motor freight transportation and warehousing. Petitioner shall not use the real estate for mining, excavating or any other purpose except outside storage and transportation."

This new filing has a *less strict commitment compared to what was filed previously with Z-2807 in 2020* and the proposed site plan is non-binding, hence not enforceable. While the location is suitable for the proposed use, staff is concerned about other potential heavy industrial uses allowed in an I3 zone by right that *are still permitted with the commitment. Staff has attached a list of uses that would still be permitted with the commitment for further clarity (Exhibit A).*

STAFF RECOMMENDATION:

Denial

Exhibit A: Staff's List of Permitted Uses based on the current UZO.

SIC	USES	With Special Exception
01	<i>Agricultural production -crops</i>	
	<i>"Commerical Greenhouses"</i>	
02	<i>Agricultural production - livestock</i>	
07	<i>Agricultural services</i>	
0721	<i>Aerial dusting and spraying</i>	w/ SE
0752	<i>Boarding, and/or training horses</i>	
	<i>Showing of pets & other animal specialties</i>	
	<i>Training of pets & other animal specialties</i>	
078	<i>Landscape and horticultural services</i>	
08	<i>Forestry</i>	
15	<i>Building construction - general contractors and operative builders</i>	
17	<i>Construction-special trade contractors</i>	
37	<i>Transportation equipment</i>	
40	<i>Railroad transportation</i>	
4013	<i>Stations operated by or for railway companies</i>	
41	<i>Local and suburban transit and interurban highway passenger transportation</i>	
4121	<i>Taxicabs</i>	
	<i>Stations operated by or for local and intercity bus companies</i>	
42	<i>Motor freight transportation & warehousing</i>	
4215	<i>Courier services, except by air</i>	
4221	<i>Farm product warehousing and storage</i>	
4225	<i>"Self-storage warehouse business"</i>	
43	<i>US Postal Service</i>	
44	<i>Water transportation</i>	
45	<i>Transportation by air</i>	w/ SE
46	<i>Pipelines, except natural gas</i>	
47	<i>Transportation services</i>	
48	<i>Communications</i>	
	<i>"Primary communications towers"</i>	
4813	<i>Local telephone communications</i>	
49	<i>Electrical, gas and sanitary service</i>	
4911	<i>Electrical power transmission</i>	
	<i>"Meteorological Tower"</i>	w/ SE
	<i>"Large-scale Solar Energy System"</i>	
	<i>"Community-scale Solar Energy Systems"</i>	
4922	<i>Natural gas transmission</i>	

4941	Water supply systems	
4952	Sewerage systems	
4953	Refuse systems	w/SE
521	Lumber and other building materials dealers	
554	"Card lock systems for commercial fleets"	
598	Fuel dealers	
5984	Liquefied petroleum gas (bottled gas) dealers	
721	Laundry, cleaning and garment services	
731	Advertising	
7312	Outdoor advertising services	
	"Outdoor advertising signs"	
733	Mailing, reproduction, commercial art and photography and stenographic services	
734	Services to dwellings and other buildings	
7342	Disinfecting and pest control services	
735	Miscellaneous equipment rental and leasing	
736	Personnel supply services	
754	"Truck tire mobile sales and service"	
76	Miscellaneous repair shops	
7629	Medical equipment repair, electrical	
7699	Medical equipment repair, except electrical	
7699	Farm machinery and - equipment service and repair	
7997	Tennis Clubs	w/SE
7999	Amusement and recreation services, not elsewhere classified (indoor)	w/ SE
	Amusement and recreation services, not elsewhere classified (outdoor)	w/ SE
8322	Adult day care centers	
833	Job training and vocational rehabilitation services	
8331	"Sheltered workshop and rehabilitation centers"	
842	"Public parks"	
9221	Police protection	
9222	Correctional institutions	w/ SE
9224	Fire protection	
971	National security	w/ SE

Z- 2845

Key No. 158-10605-0245

(State Identification No. 79-07-31-326-005.000-005)

COMMITMENT

Commitment made on March 2, 2022, by Jetboy LLC ("Petitioner") pursuant to Indiana Code § 36-7-4-1015.

1. Petitioner makes this commitment as the owner of certain real estate located in Lafayette, Tippecanoe County, Indiana commonly known as 600 Elston Road, and more particularly described on **EXHIBIT A** which is attached hereto and incorporated by reference herein ("Real Estate").

2. Petitioner, as the owner of the Real Estate, has filed a request with the Area Plan Commission of Tippecanoe County, Indiana ("APC") to rezone the Real Estate from GB to I3 which request is pending before the APC as case no. Z- 2845.

3. Petitioner hereby agrees and makes the following commitment in connection with the rezoning request in case no. Z- 2845: Petitioner agrees that the uses described in **EXHIBIT B** which is attached hereto and incorporated by reference herein which are permitted by right or special exception in an I3 zone shall not be permitted on the Real Estate.

4. Petitioner understands and agrees that this commitment is given to the APC and the City of Lafayette Common Council (the "Legislative Body") as an inducement for the recommendation for and approval of the rezoning request in case no. Z- 2845. Petitioner further understands and agrees that the approval of the rezoning request in case no. Z- 2845 by the Legislative Body constitutes good and valuable consideration for the giving of this commitment.

5. This commitment shall be a covenant running with the Real Estate and binding and enforceable against Petitioner, any subsequent owner, or any other person who acquires any interest in the Real Estate. Any change or modification of this commitment shall only be made with the approval of the APC at a public hearing in accordance with all rules and regulations of the APC.

6. Petitioner agrees that each of the following shall each be a "specially affected person" under Indiana Code § 36-7-4-1015(d)(3) who shall each independently be entitled to bring an action to enforce the terms and conditions of this commitment in the Circuit or Superior Courts of Tippecanoe County, Indiana:

- a. the APC,
- b. the Area Board of Zoning Appeals of Tippecanoe County, Indiana, and

- c. the appropriate Administrative Officer designated in the Unified Zoning Ordinance for Tippecanoe County, Indiana,
- d. the appropriate Administrative Officer designated in the Unified Zoning Ordinance for the City of Lafayette, Indiana.

PETITIONER

Jetboy LLC

By: _____

Daniel Gillis

Its: Member

STATE OF _____)

)

SS:

COUNTY OF _____)

Before me, the undersigned, a notary public, appeared Jetboy LLC, by Daniel Gillis, its Member, and acknowledged the execution of the foregoing commitment on March ____, 2022.

(written)

(printed)

NOTARY PUBLIC

Resident of _____ County, IN.

My Commission Expires:

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Kevin J. Riley

This instrument prepared by: Kevin J. Riley of the firm of REILING TEDER & SCHRIER, LLC, 250 Main Street, Suite 601, P.O. Box 280, Lafayette, Indiana 47902. Telephone: (765) 423-5333. E-mail: kjr@rtslawfirm.com

EXHIBIT A

Legal Description

The East half of a certain piece of land being part of the North half of the East half of the Southwest Quarter of Section Thirty-one (31) in Township Twenty-three (23) North, Range Four (4) West, described as follows, to-wit:

Beginning at the Southwest corner of said North half and running thence North sixty (60) poles; thence East sixty-four and 45/100 (64.45) poles; thence South thirty and 50/100 (30.50) poles; thence South fifty-eight (58) degrees West fifty-two and 57/100 (52.57) poles to the South line of said North half; thence West nineteen and 52/100 poles to the place of beginning, said East half containing ten (10) acres, more or less.

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EXHIBIT B

Prohibited Uses

SIC Group	Use
021	Confined Feeding Operation
0279	Laboratory Animal Farms
726	Crematory
10, 12, 13, 14	Metal Mining, Coal Mining, Oil and Gas Extraction, Mining and Quarrying of Nonmetallic Minerals
16	Heavy Construction other than Building Construction – Contractors
20	Food and Kindred Products
205	Bakery Products
21	Tobacco Products
22	Textile Mill Products
23	Apparel and Other Finished Products Made from Fabrics and Similar Materials
24	Lumber and Wood Products, Except Furniture
25	Furniture and Fixtures
26	Paper and Allied Products
27	Printing, Publishing, and Allied Industries
28	Chemicals and Allied Products
29	Petroleum Refining and Related Industries
30	Rubber and Miscellaneous Plastics Products
31	Leather and Leather Products
32	Stone, Clay, Glass and Concrete Products
33	Primary Metal Industries
34	Fabricated Metal Products, Except Machinery and Transportation Equipment
35	Industrial and Commercial Machinery and Computer Equipment
36	Electronic and Electrical Equipment and Components, Except Computer Equipment
38	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks
39	Miscellaneous Manufacturing Industries
50	Wholesale Trade – Durable Goods
51	Wholesale Trade – Nondurable Goods
4212	Trash Transfer Station
4953	Construction /Demolition Disposal Site
5093	Scrap and Waste Materials; Junk Yard
554	Truck Stop
7997	Flying Fields Maintained by Aviation Clubs
835	Child Care Homes; Child Care Centers
N/A	Wind Farm
N/A	Recycling Collection Facility
N/A	Recycling Processing Facility
598	Fuel Dealers
5984	Liquefied petroleum gas (bottled gas) dealers
754	Truck Tire Mobile Sales and Services

37	Transportation Equipment
4011, 4013	Railroad Transportation
4221	Farm Product Warehousing and Storage
44	Water Transportation
N/A	Primary Communication Towers
N/A	Large-Scale Solar Energy Systems